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Supreme Court, U.S.  
FILED

No. 05-322 SEP 2 - 2005

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**In The  
Supreme Court of the United States**

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TIMOTHY K. HANNA,

*Petitioner,*

v. \_\_\_\_\_

MASSACHUSETTS TURNPIKE AUTHORITY,

\_\_\_\_\_  
*Respondent.*

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**On Petition For Writ Of Certiorari  
To The Appeals Court Of The  
Commonwealth Of Massachusetts**

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED FOR REVIEW

- 1) What is the standard of review under the Public Use Clause of the Fifth Amendment in determining whether a sovereign improperly exercised its eminent domain power under the pretext of a facially valid public purpose?
- 2) Did the Massachusetts court apply the proper standard in reviewing the exercise of eminent domain power under the pretext of a facially valid public purpose in this case, where it focused its review on proof of the sovereign's "bad faith"?

## PARTIES TO THE PROCEEDING

*Petitioner*, who was the plaintiff below, is Timothy K. Hanna owner of 1672 Worcester Road, Framingham, Massachusetts prior to the Massachusetts Turnpike Authority's eminent domain taking.

*Respondent*, who was the defendant below, is the Massachusetts Turnpike Authority ("the Authority"), which is a "body corporate and politic" created by M.G.L. c. 354 § 3 (1952) within the State Department of Public Works. It was created to construct, maintain, repair and operate a toll express highway known as the "Massachusetts Turnpike." M.G.L. c. 354 § 1 (1952). The Authority is a financially independent public entity that performs an essential government function but it is not subject to the supervision or regulation of any department of state government. Its internal management is composed of a Board of Directors whom the Governor appoints. M.G.L. c. 354 § 3 (1952). The Massachusetts Legislature has authorized the Authority to acquire either public or private property through the exercise of the eminent domain to carry out the construction, maintenance, repair and operation of the turnpike, which includes taking abutting property to preserve and protect the turnpike. M.G.L. c. 354 § 5(k) (1952).

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**PETITION FOR WRIT OF CERTIORARI  
TO THE APPEALS COURT OF THE  
COMMONWEALTH OF MASSACHUSETTS**

Petitioner Timothy K. Hanna respectfully prays that the Supreme Court grant a writ of certiorari to review the judgment of the Commonwealth of Massachusetts Appeals Court.

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**CITATIONS TO THE OPINIONS BELOW**

The decision of the Middlesex Superior Court for the Commonwealth of Massachusetts is reported at *Hanna v. Massachusetts Turnpike Authority*, 16 Mass. L. Rptr. 590 (Mass. Super. 2003) and reproduced at App. 4-13. The decision of the Massachusetts Appeals Court, of which review is sought, is an unpublished decision reproduced at App. 1-3. The denial of the Massachusetts Supreme Judicial Court for further appellate review is reported at *Hanna v. Massachusetts Turnpike Authority*, 444 Mass. 1104 (2005) and reproduced at App. 16.

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**STATEMENT OF JURISDICTION**

On May 19, 2003, the Middlesex Superior Court for the Commonwealth of Massachusetts denied the petitioner's claim that the eminent domain taking violated the Fifth Amendment to the United States Constitution. (App. 4-12). The Massachusetts Appeals Court affirmed the Superior Court's judgment and adopted its reasoning in a memorandum and order pursuant to Rule 1:28 of the Massachusetts Appeals Court Rules on December 23, 2004. (App. 1-3). The Appeals Court denied the petitioner's

timely petition for reconsideration on April 25, 2005. (App. 14-15). The Massachusetts Supreme Judicial Court denied the petitioner's application to obtain further appellate review on June 9, 2005. (App. 16).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). (App. 18).

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### **CONSTITUTIONAL PROVISION INVOLVED IN THIS CASE**

This case implicates the Public Use Clause of the Fifth Amendment to the United States Constitution. (App. 17).

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### **CONCISE STATEMENT OF THE CASE**

On August 9, 1994, the respondent took 5.16 acres of the petitioner's private property in Framingham, Massachusetts, by eminent domain ("the locus"). The frontage of the locus runs parallel to Route 9 eastbound, while the rear of the locus abuts the exit loops of the Massachusetts Turnpike ("the Turnpike" also known as Interstate 90) at Turnpike Interchange 12. These loops encircle two islands of the respondent's real estate that totaled 56 acres (collectively "the Loop Ramp Parcels"). The rear of the locus also abuts the 9/90 Corporate Center, which is an office park that consists of roughly one million square feet of office space and includes Staples World Wide Headquarters. (See Maps at App. 54-55)

Throughout the process for the taking, the petitioner and several government officials understood that the locus

was a gateway to both the 9/90 Corporate Center and the Loop Ramp Parcels. Additionally during this period, the petitioner notified the respondent that he would lease the locus. The respondent, however, relying on a non-existent regulation determined that ownership in fee was mandated.

On December 6, 1991, the Massachusetts Department of Environmental Protection ("DEP") regulation 310 C.M.R. 7.37 mandated that the respondent: (1) establish roadway thresholds related to air quality standards within a defined study area; (2) study High Occupancy Vehicle ("HOV") lane and other defined HOV incentives; and (3) submit a report regarding the thresholds and its HOV study. (App. 30). DEP regulation 310 C.M.R. 7.37 defines the study area as "Interstate-90 [the Turnpike] eastbound and westbound between Interstate-93 and Interstate-95." (App. 30). But DEP regulation 310 C.M.R. 7.37 did not define Park & Ride lots as HOV incentives (App. 38); nor did it allow the respondent to substitute projects. (App. 37). Additionally, DEP regulation 310 C.M.R. 7.37 did not authorize the respondent to take private property by eminent domain.<sup>1</sup>

The respondent retained URS Consultants, Inc. ("URS"), a traffic consultant experienced in managing queue flows through turnpike toll plazas, to study a variety of HOV alternatives including: (1) HOV toll booths; (2) head to queue privileges; (3) electronic toll collection; and (4) HOV lanes. Additionally, at the direction of the respondent, URS conducted a separate Park & Ride study

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<sup>1</sup> The respondent exercised its eminent domain power pursuant to M.G.L. c. 354 § 5(k) (1952).